

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT KURT SCHERER, No. Civ. S-04-0109 DFL GGH

Plaintiff, Memorandum of Opinion  
and Order

v.

HOME DEPOT U.S.A., INC.,  
KRAUSE, INC., AND DOES 1-100,

Defendants. /

Prevailing defendants Home Depot and Krause have submitted bills of costs following their successful defense of this action before a jury. "[C]osts other than attorneys' fees shall be allowed as of course to the prevailing party." Fed. R. Civ. P. 54(d)(1). Local Rule 54-292(b) provides that a bill of costs "shall itemize the costs claimed and shall be supported by a memorandum of costs and an affidavit of counsel that the costs claimed are allowable by law, are correctly stated, and were necessarily incurred." Prevailing defendants Krause and Home Depot request costs of \$22,621.01 and \$14,449.75, respectively,

1 and they have filed the required memoranda and declarations.

2 Given the length of trial and the nature of the issues, the  
3 total costs claimed are quite modest.

4 Plaintiff makes no argument that defendants are not  
5 generally entitled to recover their costs, but he objects to the  
6 reasonableness or appropriateness of some of the cost items  
7 detailed in defendants' supporting declarations. Plaintiff  
8 cites no legal authority to support any of his objections.

9

10       A. Objections to Krause's Costs

11

12       *Copying Charges:*

13       Plaintiff objects to photocopying charges because "he is  
14 unable to determine whether these costs were necessary to the  
15 defense of the case." A prevailing party may recover necessary  
16 copying costs. 28 U.S.C. § 1920(4); LR 54-292(f)(5). Krause's  
17 attorney, Ron Haven, has submitted a declaration setting out the  
18 various copying charges incurred and avering that "each cost . .  
19 . has been necessarily incurred in this matter and the services  
20 for which the following fees have been charged were actually and  
21 necessarily performed." Haven Decl. (doc # 339-4) ¶ 4.

22 Plaintiff's speculative suggestion that the expense listed in  
23 Item E "seem[s] unlikely" is inadequate reason to question an  
24 attorney's sworn statement that it was necessarily incurred when  
25 the costs themselves are reasonable on their face.

26

27

28       *Photography Charges:*

1 Plaintiff objects to certain claimed photography charges.  
2 The costs of preparing photographs are allowable under § 1920.  
3 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal  
4 Practice and Procedure § 2677. Nevertheless, plaintiff objects  
5 to the following photographic and other document-related costs  
6 listed in Ron Haven's declaration:

7 K, L, R, U, EE, GG, LL, MM, PP, QQ, RR, TT, UU, VV, WW:  
8 Plaintiff states that he is unaware of why the items were  
9 reproduced and/or speculates that the costs involved were  
10 unnecessary. Plaintiff's objections rest on an implicit demand  
11 for greater detail about each cost item than the local rules  
12 require Krause to provide.

13 W, Y: Plaintiff asserts that "there should not be a charge  
14 for scanning and e mailing [sic] documents." The charges at  
15 issue are for \$31.57 and \$55.09. Plaintiff provides no  
16 authority for the proposition that the costs of electronic  
17 document production are not recoverable.

18 S, XX: Plaintiff asserts that these costs - \$141.43 to  
19 print the contents of a CD and \$3,840 to produce Dr. Quan's  
20 trial exhibit boards - are excessive. Plaintiff's objection to  
21 the \$141.43 printing charges is without merit. Although the  
22 \$3,840 charge is high, Dr. Quan's testimony was central to the  
23 defense and preparation of trial exhibit boards of several  
24 thousand dollars was a reasonable method of illustrating his

1 testimony. Indeed, one can imagine that more expensive  
2 animations might have been prepared.

3 *Depositions:*

4 Plaintiff objects to various deposition-related charges  
5 detailed in Ron Haven's declaration in support of reimbursement  
6 for deposition fees (doc # 339-2), as follows:

7 8(A): \$112.55 for documenting the nonappearance of Lindley  
8 Manning at his deposition.

9 8(B): \$100.80 for documenting nonappearance of Russell  
10 Darnell at his deposition.

11 8(C): \$4,950.42 for transcripts of Dr. Darnell's deposition

12 8(D): transcript and witness fees for Thomas Sartoris'  
13 deposition.

14 8(E): costs associated with the second day of Dr. Balser's  
15 deposition.

16 Plaintiff's objections to these cost items are not  
17 persuasive.

18 Accordingly, the court GRANTS Krause \$22,621 in costs as  
19 requested.

20 **B. Objections to Home Depot's Costs**

21 *Clerk's Fees:*

22 Plaintiff objects to paying \$180.00 for Sherry Rasmus's *pro*  
23 *hac vice* application. *Pro hac vice* fees may be recoverable as

1 costs. Davis v. Puritan-Bennett Corp., 923 F.Supp. 179, 181 (D.  
2 Kan. 1996).

3 *Docket Fees:*

4 Plaintiff objects to unspecified docket fees. It is  
5 unclear which cost items this objection refers to. At any rate,  
6 docket fees are recoverable under § 1920(5).

7 *Exemplification and Copying Charges:*

8 Plaintiff objects to various copying charges on grounds  
9 that he does not know exactly what was copied and that "[i]t was  
10 defendant's choice to enlarge and make boards of ordinary  
11 documents; this should not be plaintiff's burden herein." As  
12 discussed above, copying charges are recoverable, and Home Depot  
13 has complied with LR 54-292.

14 *Deposition Transcripts:*

15 Plaintiff objects to paying costs associated with the  
16 second, third and fourth days of Dr. Darnell's deposition. He  
17 asserts that the deposition took so long because Home Depot's  
18 attorney was unprepared. Home Depot counters that the  
19 deposition was extended because Dr. Darnell was unprepared.  
20 Plaintiff's submission does not persuade the court that the  
21 multi-day deposition was the result of abusive discovery tactics  
22 by defendant. This cost shall be awarded in full.

23 *Service of Process:*

1 Plaintiff objects to paying costs associated with serving  
2 members of his family because "each of them would have been  
3 willing to sit for a deposition without a subpoena or have  
4 allowed Plaintiff's counsel to accept service on their behalf."  
5 Home Depot responds that plaintiff never volunteered to make  
6 these witnesses available, and that one member of plaintiff's  
7 family failed to attend her deposition despite being subpoenaed.  
8 Home Depot's decision to subpoena these witnesses was  
9 reasonable.  
10

12 Plaintiff's objections to Home Depot's costs are not  
13 persuasive. Home Depot seeks a total of \$14,449.75, which is a  
14 reasonable sum given the length and complexity of the trial.  
15 Based on the sworn declarations of Home Depot's counsel, the  
16 court is satisfied that each of the costs Home Depot requests  
17 was necessarily incurred. Accordingly, the court GRANTS Home  
18 Depot costs in the amount of \$14,449.75.  
19

20 IT IS SO ORDERED.  
21 Dated: April 9, 2007  
22

23 /s/ David F. Levi  
24 DAVID F. LEVI  
25 United States District Judge  
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